



In the Matter of the Arbitration between
Massachusetts Gaming & Entertainment

vs

Town of West Bridgewater, Massachusetts

CMCI File: A9934

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and heard on January 29, 2016 and the witnesses having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

Evidence:

This hearing was conducted pursuant to the provisions of 205 CMR 125 and the guidelines enunciated in the Handbook for Binding Arbitration between an applicant for a gaming establishment license and a surrounding community. By agreement, there was no direct testimony. Each party relied on the submission of documents, memoranda and oral arguments. All exhibits were entered without objection.

Issue:

What is a reasonable and fair community impact fee?

Facts:

Massachusetts Gaming & Entertainment is an applicant for a Category 1 gaming license, and if successful, said project to be constructed on a portion of the Brockton Fairground off Belmont Street in the City of Brockton, Massachusetts.

The Town of West Bridgewater has been designated as a surrounding community. The Town lies south of Brockton, Massachusetts with its northern border approximately ½ mile from the proposed facility. The parties have submitted a proposed surrounding community agreement



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(copy attached and incorporated by reference into this decision) with every provision agreed to, except that part of Section 2 in bold type, which is in dispute. In essence, the best and final offer of Massachusetts Gaming & Entertainment is the proposed agreement without the language of section 2 in bold type and the best and final offer of West Bridgewater is the proposed agreement with the language in bold type included. The estimated cost of this provision is approximately 1.4 million dollars.

West Bridgewater is the primary gateway for traffic coming from the south to Brockton. A traffic study commissioned jointly by the Town of Easton and West Bridgewater, indicate two major intersections within the town – Route 106 (East Center Street) and East Street and the intersection of Route 28 (North Main Street) at Matfield Street – would be seriously impacted by traffic generated by the proposed Brockton casino. West Bridgewater also has primary responsibility to respond to traffic related accidents on Route 24 for a distance of approximately nine miles.

Massachusetts Gaming & Entertainment also commissioned a traffic study. Its results indicate approximately 78% of the vehicle trips to and from the proposed casino will use Route 24 and will have minimal impact on local roadways in any of the surrounding communities.

Decision:

I find the best and final offer of Massachusetts Gaming & Entertainment to be the more reasonable and fair offer.

I base this primarily on two factors:

1) I find the methodology utilized in their traffic study (a regional gravity model used in the Traffic Impact and Access study prepared for the Brockton site and expanded to cover surrounding communities) to be the accepted and preferred methodology in the industry in determining traffic impact. This study as indicated earlier, concluded the bulk of the expected traffic increase (78%) would occur on Route 24, and there would be negligible impact on the roads of the surrounding communities. The Town of West Bridgewater would experience approximately 0.7% of the traffic generated by the proposed Brockton facility which would result in a total peak hour increase of 6 to 8 vehicles. It also concluded there would not be a significant impact on that section of Route 24 for which the Town of West Bridgewater is responsible.



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2) I deem it relevant the proposed agreement with West Bridgewater with an annual community impact fee beginning at \$130,000.00 matches the highest amount to be received by any of the seven surrounding communities that have entered into agreements. It is anticipated the traffic impact to these communities are comparable to that of West Bridgewater.

Lastly, I recognize predicting traffic impact is not an exact science, and if these estimates are considerably off the mark, the Town does have recourse to seek additional compensation from The Community Mitigation Fund.

Gregory R. Baler
Gregory R. Baler, Arbitrator

2/4/16
Date

SURROUNDING COMMUNITY AGREEMENT

By and Between the Town of West Bridgewater, Massachusetts

and

Mass Gaming & Entertainment, LLC

This Surrounding Community Agreement (the “**Agreement**”) is made and entered into as of February __, 2015 (the “**Effective Date**”), by and between the Town of West Bridgewater, Massachusetts, a municipality of the Commonwealth of Massachusetts with its offices at 65 North Main Street, West Bridgewater, MA 02379 (the “**Town**”), and Mass Gaming & Entertainment, LLC, a Delaware limited liability company with its principal office at 900 North Michigan Avenue, Chicago, Illinois 60611 (“**MGE**”) (each a “**Party**”, both collectively, the “**Parties**”).

WHEREAS, MGE is in the process of applying to the Massachusetts Gaming Commission (the “**Commission**”) for a Category 1 gaming license as defined by Chapter 23K of the General Laws of the Commonwealth of Massachusetts (“**Chapter 23K**” or the “**Act**”), to construct and operate a gaming establishment and ancillary hotel, dining, entertainment, and other amenities (collectively, the “**Project**”) to be built on a portion of the Brockton Fairground off Belmont Street in Brockton, Massachusetts (the “**Property**”);

WHEREAS, as provided for by Chapter 23K, MGE has entered into a Host Community Agreement with the City of Brockton, which calls for MGE to work in a good faith and non-discriminatory manner to give reasonable preference in the hiring for Project construction jobs and permanent Project positions, first to properly-qualified Brockton residents, and then to properly-qualified residents of Surrounding Communities, and to utilize properly-qualified, price-competitive local contractors and suppliers for the operation of the Project and to provide reasonable assistance to such local vendors in satisfying the Commission’s requirements;

WHEREAS, the Town and MGE anticipate that the Project will create regional benefits for Brockton and its surrounding and adjacent communities, including the Town, and Chapter 23K provides a mechanism for the applicant for a Category 1 gaming license to enter into an agreement with a Surrounding Community, setting forth a Community Impact Fee for the Surrounding Community to address the adverse impacts, if any, on the Surrounding Community, and all stipulations of responsibilities between the Surrounding Community and the applicant;

WHEREAS, in addition to any payments to be provided by MGE under this Agreement, the Town has the right to seek and intends to seek monies available to the Town under the Act, including but not limited to, those monies in the Community Mitigation Fund; and

WHEREAS, in furtherance of these goals, and in satisfaction of the requirements of Chapter 23K, the Parties are entering this Agreement to set forth their mutual understandings in effectuating the purposes set forth above.

NOW, THEREFORE, in consideration of the promises, terms, conditions, agreements, and mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Definitions.

Any term used in this Agreement that is defined in Section 2 of Chapter 23K shall be given such definition for purposes of this Agreement unless a different definition is expressly provided herein.

1.1 “Annual Community Impact Fee” means an annual Community Impact Fee in the amount of \$130,000.00 (One Hundred Thirty Thousand Dollars), paid in Quarterly Installments by MGE to the Town. The amount of the Annual Community Impact Fee will increase by five percent (5%) on the fifth anniversary of the day the Project is first Open for Business to the General Public to \$136,500.00 (One Hundred Thirty-Six Thousand, Five Hundred Dollars), by an additional five percent (5%) on the tenth anniversary of the day the Project is first Open for Business to the General Public to \$143,325.00 (One Hundred Forty-Three Thousand, Three Hundred Twenty-Five Dollars), and by an additional five percent (5%) on each subsequent five-year anniversary for so long as MGE continues to operate the Project.

1.2 “Community Impact Fee” means the payment to the Town called for by Section 15(9) of the Chapter 23K.

1.3 “Comparable Surrounding Community” means any of the municipalities of Abington, Avon, East Bridgewater, Easton, Holbrook, Pembroke, Stoughton, West Bridgewater, and Whitman other than the Town.

1.4 “Quarterly Installments” means that MGE will pay each Annual Community Impact Fee to the Town in four equal, quarterly installments over the course of a 365-day period (366 days when the period includes February 29th of a leap year), with the first installment due on the day the Project is first Open for Business to the General Public, and thereafter on the annual anniversary of that day, and each of the three subsequent installments each year due on the same date of the month of the first installment, but three, six, and nine months thereafter. By way of example, if the Project is first Open for Business to the General Public on June 10th, then the first quarterly installment would be due on that date and the subsequent quarterly installments would be due on September 10th, December 10th, and March 10th. If the date for payment of a quarterly installment falls on a weekend or holiday, MGE will pay that quarterly installment on or before the next following business day. MGE may pay at its election any quarterly installment before it is due; any such early payment by MGE of a quarterly installment will not change the dates on which subsequent quarterly installments are due.

1.5 “Open for Business to the General Public” means that the Project’s gaming area (as defined in the Act) is open for business to the general public.

1.6 “Project License Fee” means the Category 1 gaming establishment license fee paid by MGE for the Project under Section 10(d) of Chapter 23K.

Section 2. Community Impact Fee.

On or before one year after MGE pays the Project License Fee, but before the Project is Open for Business to the General Public, on a date of MGE’s choosing, MGE will pay the Town an initial Community Impact Fee in the amount of \$60,000.00 (Sixty Thousand Dollars).

[Within five years after the Project is Open for Business to the General Public, MGE will (1) pay for the Town to hire a traffic engineering firm to design curbing, signalization, geometric, and other improvements for the intersection of North Main Street and Matfield Street, with payment to be made upon receipt of invoices from the Town's chosen engineering firm; at the Town's direction, MGE will either reimburse the Town for such costs or directly pay the Town's traffic engineering firm, and (2) pay for the cost of constructing and implementing those improvements to the intersection, provided that the Town shall cooperate with MGE in obtaining all necessary permits and approvals for the work. Within ten years after the Project is Open for Business to the General Public, MGE will pay for construction of curbing, signalization, geometric, and other improvements for the intersection of East Street and East Center Street according to the Town's then existing design for such improvements, provided that the Town shall cooperate with MGE in obtaining all necessary permits and approvals for the work. The foregoing intersection improvements are meant to be generally consistent with the improvements recommended by and cost estimates provided by BETA Group, Inc. on page 23 of its "Traffic Assessments Related to Brockton Casino – Town of Easton and West Bridgewater, dated January 6, 2016. For avoidance of doubt, MGE shall not be required to make payments under this paragraph before the Project is Open for Business to the General Public, the Town will be the contracting party for the design and construction work, and all payments by MGE will be subject to Chapter 23K, the Commission's regulations, and MGE's Category 1 gaming license.]

Contemporaneous with or after MGE's payment to the Town of the initial Community Impact Fee, but on or before the date the Project is first Open for Business to the General Public, on a date of MGE's choosing, MGE will begin making Annual Community Impact Fee payments to the Town, with the payment of subsequent Annual Community Impact Fees to begin on the anniversaries of the day the Project is first Open for Business to the General Public. MGE's obligation to pay Annual Community Impact Fees to the Town will continue until the expiration or earlier termination of MGE's initial Category 1 gaming license or any renewal thereof, as applicable.

Section 3. Reimbursement of Consulting and Legal Fees

Notwithstanding anything else in this Agreement, within thirty (30) calendar days after the execution of this Agreement, MGE shall reimburse the Town for up to Ten Thousand Dollars (\$10,000.00) in third-party, out-of-pocket consulting and legal fees incurred by the Town in connection with evaluating the impacts, if any, of the Project on the Town and with negotiating and executing this Agreement and advising the Town regarding the same, for which the Town provides MGE with copies of third-party invoices; provided that the Town need not provide MGE with the portions of invoices from the Town's legal counsel containing descriptions of the work performed, and that MGE will pay such invoices without dispute as to amount (subject to the aforementioned \$10,000.00 aggregate limit). This consultant and legal fee reimbursement shall not be subject to setoff or reduction for any reason, and this obligation shall survive the termination of this Agreement and shall be unaffected by whether the Commission awards a Category 1 gaming license to MGE.

For avoidance of doubt, MGE's reimbursement under this Section 3 of the Town for third-party, out-of-pocket consulting fees incurred by the Town shall be in addition to the up to Twenty-Five Thousand Dollars (\$25,000.00) that MGE agreed to pay the Town of Easton (acting on behalf

of itself and West Bridgewater) toward the cost of hiring BETA Group, Inc. to prepare its “Traffic Assessments Related to Brockton Casino – Town of Easton and West Bridgewater.”

Section 4. Town Obligations

In consideration of the mitigation measures that MGE will undertake, and in further recognition of the benefits the Project will bring to the Town, the Town will do the following:

4.1 Not Oppose MGE’s license application

The Town will not oppose MGE in its application for a Category 1 gaming license from the Commission. Nothing herein shall be construed to preclude any Town resident or employee from exercising his or her personal, constitutional rights of expression or to petition government.

4.2 No new taxes or fees targeting the Project

The Town will not attempt, directly or indirectly, to adopt or implement, nor will the Town accept, any taxes, fees, or other assessments specific or unique, by language or effect, to a gaming establishment, its customers, employees, tenants, vendors, suppliers, or owners that do not generally apply to non-gaming businesses in the Town. Nothing herein shall prevent the Town from seeking or accepting any grant or other funds from the Commonwealth of Massachusetts available to municipalities under the Act, including, but not limited to, from the Community Mitigation Fund under G.L. c. 23K, § 61, and the request for or award of any such funds by or to the Town shall not change the timing of or the amount of the initial Community Impact Fee or the Annual Community Impact Fee.

Section 5. Term.

The term of this Agreement commences on the Effective Date and will end on the earliest of:

- A. Any date on which MGE provides written notice that it elects to abandon efforts to obtain a Category 1 gaming license for the Project;
- B. Any date on which the Commission has issued a Category 1 gaming license for Region C to another applicant and MGE has provided written notice that it has decided to discontinue pursuit of a Category 1 gaming license for the Project;
- C. Any date on which MGE provides written notice that it elects not to construct, or to permanently cease operations of, the Project;
- D. Any date upon which the Category 1 gaming license previously issued to MGE for the Project is revoked, rescinded, or expires without having been renewed; or
- E. By the mutual agreement of the Parties to terminate the Agreement.

Section 6. Notices.

Any notices given under this Agreement must be made in writing and delivered by hand, nationally-recognized overnight delivery service, or certified mail, postage pre-paid (return receipt requested), and will be effective upon receipt for hand or overnight delivery, and three (3) calendar days after mailing for mailed notice, to the other Party at the following addresses:

If to the Town:

West Bridgewater Board of Selectmen
West Bridgewater Town Hall
65 N. Main Street
West Bridgewater, MA 02379
Attn: Town Administrator

With a copy to:

Gay & Gay, P.C.
73 Washington Street
P.O Box 988
Taunton, MA 02780
Attn: David Gay, Esq.

If to MGE:

Mass Gaming & Entertainment, LLC
900 N. Michigan Avenue, Suite 1600
Chicago, IL 60611
Attention: Legal Department

With a copy to:

Dain, Torpy, Le Ray, Wiest & Garner, P.C.
745 Atlantic Avenue, 5th Floor
Boston, MA 02111
Attention: Charles N. Le Ray, Esq.

After the Project is first Open for Business to the General Public, with a 2nd copy to:

[Name of Category 1 gaming establishment to be provided by MGE]
[Street address to be provided by MGE]
Brockton, MA 02301
Attention: General Manager

Any Party may change its notice address(es) hereunder by giving notice to the other of the new notice address(es) as provided by this section.

Section 7. Limitation on Liability.

The Parties agree that neither Party shall be liable for indirect, special, consequential, or punitive damages arising out of or related to this Agreement. For avoidance of doubt, the Parties agree that MGE's only obligations under this Agreement shall be to make the payments to the Town provided for under Sections 2, 3, and 9 of this Agreement and to provide the Town with such notice as may be required under Sections 5, 10.5, and 10.8 of this Agreement.

Section 8. No Third Party Beneficiaries.

No provision of this Agreement shall be construed in any manner so as to create any rights in any third parties not party to this Agreement. The Agreement shall be interpreted solely to define specific duties and responsibilities of and between the Town and MGE, and shall not provide any basis for claims of any other individual, partnership, corporation, organization, municipal entity, or any other third party.

Section 9. Transferability/Assignment

MGE may transfer or assign, subject to the Act and the Commission's regulations, its rights and obligations under this Agreement to any transferee or assignee of the Category 1 gaming license to operate the Project as approved by the Commission, provided that the transferee or assignee assumes all obligations and liabilities hereunder. The Town will be bound by this Agreement regardless of any such transfer or assignment. Any transferee or assignee of MGE will likewise be bound by this Agreement to the fullest extent allowed by law and shall promptly give notice to the Town as provided herein upon the completion of such transfer or assignment. For the avoidance of doubt, after any transfer or assignment of the Agreement in accordance with the terms of this Section 9, MGE shall have no further obligations under this Agreement provided that MGE has paid and performed all of its obligations up to the date of assignment or transfer, and further provided that the assignee or transferee has accepted and assumed all of MGE's responsibilities under this Agreement.

The Town acknowledges and agrees MGE and its successors or assigns may, at any time and on one or more occasions, to provide security to a lender, mezzanine lender, or equity holder in connection with a financing or equity contribution, pledge or otherwise collaterally assign this Agreement and all documents, agreements, understandings, and arrangements relating to the transaction contemplated by this Agreement. The Town will, to the extent permitted by law, within fifteen (15) business days after receiving such a request, or within a commercially reasonable time thereafter, execute any commercially reasonable and customary instruments that do not deviate from, limit, or waive its rights or increase its obligations, provided that MGE shall within thirty (30) calendar days after receipt of invoices (which need not include the portions containing descriptions of the legal work performed) reimburse the Town for any reasonable legal fees and expenses incurred in reviewing and evaluating such request(s).

The Town shall not transfer or assign, in whole or in part, its obligations or benefits under this Agreement.

Section 10. Miscellaneous.

10.1 Integration. This Agreement constitutes the entire agreement between the Parties with respect to the subject hereof. No agent, representative, employee, or officer of the Town or MGE has authority to make, or has made, any statement, agreement, or representation, oral or in writing, in connection with this Agreement which in any way can be deemed to modify, add to, or detract from, or otherwise change or alter the terms and conditions of this Agreement. No negotiations between the Parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. No modifications, alterations, or changes to this Agreement or to any of its terms and conditions shall be valid or binding unless memorialized by a written amendment signed by both Parties in accordance with the terms and conditions of this Agreement.

10.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Facsimile or electronically-scanned signatures shall be considered as valid signatures as of the date thereof.

10.3 Construction of Agreement. The Parties each acknowledge that they were represented by separate and independent counsel in connection with the drafting, review, and negotiation of this Agreement, and that this Agreement shall not be subject to the principle of construing its meaning, or the meaning of any part of the Agreement, against the Party that drafted the same. Each Party acknowledges that it relied solely on its own judgment, legal counsel, and other advisors in entering this Agreement, without relying in any manner on any statements, representations, or recommendations of the other Party other than as expressly set forth in this Agreement, that it understands and accepts the implications of this Agreement, and that it voluntarily entered into this Agreement.

10.4 Amendment. This Agreement shall not be amended except upon the written consent of both Parties.

10.5 Town's Termination Right. Upon entering any surrounding community agreement with a Comparable Surrounding Community, MGE will provide a copy of that agreement to the Town. If that agreement is More Beneficial to the other community (exclusive of a surrounding community agreement entered into as a result of an adverse ruling in an arbitration proceeding under 205 CMR 125.01(6)(c)(7), in which the arbitrator selects the best and final offer of such other surrounding community) then within fourteen (14) calendar days after receipt of a copy of such agreement, the Town may elect in writing to terminate this Agreement. For purposes of this paragraph, the term "More Beneficial" means that a surrounding community agreement with a Comparable Surrounding Community includes: (a) initial or annual Community Impact Fee payments in excess of those provided under Sections 1 and 2 hereof; (b) other payments not provided for herein; (c) MGE's construction, installation, or funding of public infrastructure improvements or other improvements within such Comparable Surrounding Community; or (d) hiring or vendor preferences that exceed those stated herein or give priority to such Comparable Surrounding Community beyond those provided for herein. In the event of such termination, the parties shall negotiate in good faith toward executing a new Surrounding Community Agreement. If the parties are unable to negotiate a new Surrounding Community Agreement within thirty (30) calendar days after termination, the parties shall notify the Commission and engage in binding arbitration, pursuant to the provisions of 205 CMR 125.01(6)(c), and the Commission's *Handbook for*

Binding Arbitrations Between An Applicant For a Gaming Establishment License and a Surrounding Community to Reach a Surrounding Community Agreement.

10.6 Governing law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, as amended from time to time, including without limitation Chapter 23K and the Commission's rules and regulations, without regard to the Commonwealth's conflict of laws provisions. Any dispute arising under or in connection with this Agreement shall be within the exclusive jurisdiction of the Massachusetts Superior Court for Suffolk County.

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF MGE AND THE TOWN, AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY STATUTORY OR ANY OTHER STATUTORY REMEDY.

Notwithstanding the foregoing provisions for forum selection, the Parties agree that before resorting to any formal dispute resolution process concerning any dispute arising from or in any way relating to this Agreement, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. If the Parties agree to engage the services of a professional mediator or arbitrator, MGE and the Town will bear the cost of such services equally, and the non-prevailing Party in any arbitration or litigation between the Parties shall promptly reimburse the prevailing Party for the prevailing Party's reasonable costs, including attorneys' fees, as shall be awarded by such arbitrator or court.

10.7 Relationship of the Parties. Nothing in this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for the purpose of affecting the provisions of this Agreement. The Parties are not, and will not be construed to be, in a relationship of joint venture or partnership. Neither Party has the authority to make any statements, representations, promises, or commitments of any kind on behalf of the other Party.

10.8 Force Majeure. MGE shall not be in default in its performance of its obligations under this Agreement to the extent that performance is impaired by a Force Majeure event attributable to circumstances beyond MGE's reasonable control. If MGE is delayed or prevented in the performance of any obligation under this Agreement by a Force Majeure event, it will provide reasonable notice to the Town of the circumstances delaying or preventing performance and the expected duration thereof, if known.

10.9 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and upon their respective successors and assigns.

10.10 Exercise of Rights and Waivers. The failure of any party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

10.11 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way affect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and vice versa, and all words of neuter gender shall be construed to include the masculine and feminine forms of such words.

10.12 Authority. Each Party represents and warrants to the other that it has full power and authority to enter this Agreement and to perform its obligations hereunder, and that the person signing this Agreement on that Party's behalf has the authority to sign and to bind that Party.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date set forth above, on the date(s) set forth below.

Mass Gaming & Entertainment, LLC

**Town of West Bridgewater, Massachusetts
acting by and through its Board of Selectmen**

By: Neil G. Bluhm
Title: Chairman
Date:

Name:

Name:

Name:

Date: